IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Prasar Bharati Broadcasting Corporation of India
Vs.
State of Rajasthan & Others
(S.B. Civil Writ Petition No.733/2006)

DATE OF ORDER : August 8th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Rajesh Joshi for the petitioner.
Mr. N.M. Lodha, Addl. Advocate General for the State.
Mr. Vineet Kumar Mathur for the Union of India.
Mr. J.K. Chanda for the respondent Bank.

BY THE COURT :

By this writ petition, the petitioner Prasar Bharati Broadcasting Corporation of India, through Station Engineer, All India Radio, Udaipur has agitated against levy of land and building tax on the properties in its occupation and, so also, against the recovery proceedings initiated against it under the Land Revenue Act and consequent attachment order dated 02.02.2006 (Annex.-20) issued by respondent No.3 S.D.M., Girva, Udaipur.

According to facts of the case set out in the writ petition, the petitioner is a Corporation established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (referred to hereinafter as "the Act of 1990") having come into force with effect from 15.09.1997. the definition clause under Section 2(a) of the Act of 1990 provides that "Akashwani" means the offices, station and other establishment by whatever name called which immediately before the appointed day, form part of or were under the Director General, All India Radio of the Ministry of Information & Broadcasting, Government of India. Vide para 3, at page 3-A, the petitioner has enumerated the properties in the occupation of the Akashwani in Udaipur and asserted that these properties belong to the Union of India and was allotted by His Excellency, the Governor of Rajasthan in favour of the Union of India.

The petitioner contends that as per Article 285 of the Constitution of India, the properties of the Union of India are exempted from all tax liabilities imposed by either the State or any authority within the State. Referring to the provisions of Article 285 of the Constitution of India, the petitioner contends that against the constitutional provision the respondent No.2 Asstt. Director, Land & Building Department, Udaipur initiated proceedings against the petitioner for assessment of land and

building tax on the properties referred to in para 3 of the writ petition and, on 20.02.2002, in respect of three properties, passed cumulative assessment order vide Annex.-4 raising a tax liability in the sum of Rs.1,05,86,792/-. The petitioner submits that though the liability of tax was illegally fastened upon the petitioner, it has deposited a sum of Rs.51,96,277/- vide Annex.-5 dated 27.03.2002. The petitioner thereafter further deposited a sum of Rs.10,01,407/- vide communication Annex.-6 dated 27.06.2002.

It is submitted that after the aforesaid having been done, the respondent again issued a revised demand enhancing the liability to the sum of Rs.2,61,90,936/- under Form L.B.T. 7 vide Annex.-7 dated 31.03.2004. The petitioner contends that before issuing the said revised demand neither any notice was given to the petitioner nor any proceedings under Section 15-B of the Rajasthan Land & Building Tax Act, 1964 (hereinafter referred to as "the Act of 1964") was initiated, therefore, the order Annex.-7 dated 31.03.2004 is per se illegal and passed in flagrant violation of the principles of natural justice.

The petitioner's contention in the writ petition is that the demand raised and further revised by the respondents is in violation of the mandatory provisions of the Act of 1964 and though the petitioner has partly deposited the tax immediately,

the petitioner is, in fact, not liable to pay land and building tax upon the properties in question because the properties assessed by the assessing authority belong to the Union of India. Therefore, the petitioner being a Corporation of the Union of India impressed upon the State Government before the Finance Secretary vide communication dated 18.01.2005 that the properties which the petitioner Corporation holds belong to the Union of India and as per the provisions of Article 285 of the Constitution of India the properties of the Union of India are exempted from all tax liabilities. But, unfortunately, without giving any heed to the communication dated 18.01.2005 coercive measures have been taken up under Section 230 of the Rajasthan Land Revenue Act, 1956 and petitioner's bank account was seized. In the circumstances, the petitioner sent a communication to the Divisional Commissioner requesting him to stay the order dated 28.09.2004. Then, the petitioner approached the Finance Secretary of the State who assured the petitioner to redress the grievance and also instructed the respondents to release the petitioner's bank account. Upon the intervention of the Finance Secretary, the respondents released the bank account of the petitioner on the same day and the matter is thus pending with the State authorities. However, the petitioner sent yet another communication dated 29.12.2004 to

the State Government and requested to give proper instructions to the respondents that the properties which the petitioner is holding are still in the name of the Union of India and have not been transferred yet in the name of the petitioner, therefore, in accordance with the provisions of Article 285 of the Constitution of India no tax can be levied in the form of land and building tax on the properties of the Union of India.

It is further submitted that the Addl. Secretary & Finance Advisor, Government of India in the Ministry of Information & Broadcasting has cleared the position vide communication dated 27.12.2004 that the properties are yet to be transferred to the petitioner Corporation and so long as the assets are not transferred through notification the land and building shall continue to remain the assets of the Union of India. However, the respondents again sent notice to the Corporation to deposit the remaining amount of the tax. Hence, this writ petition.

Besides other grounds, the main contention raised by the petitioner before this Court, while inviting attention towards certain documents, is that Prasar Bharati Corporation is an instrumentality of the Union of India and the properties which the petitioner Corporation is holding belong to the Union of India and the same have not been transferred till date to the petitioner Corporation and as such they continue to be in the name of

Union of India which is obvious from the letter Annex.-14 dated 27.12.2004. So also, Annex.-23 dated 05.06.2006, which is placed on record by way of filing application for taking the same on record, speaks in categorical terms that the properties in respect of which the assessment order has been passed for the liability of land and building tax cannot be imposed because the said properties are properties of the Union of India and exempted under Article 285 of the Constitution of India. The certificate dated 05.06.2006 issued by the Under Secretary to the Government of India reads as under :

"TO WHOMSOEVER IT MAY CONCERN

> THIS is regarding imposition of taxes and duties under the State Laws on the property and assets of Prasar Bharati (Broadcasting Corporation of India), established under section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) with effect from 23rd November, 1997.
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> 2. THE issue regarding imposition of tax by the State Governments was taken up with the Ministry of Finance in the Government of India, who have clarified that the Government of India have not yet formally transferred the land to Prasar Bharati (Broadcasting Corporation of India). So long as the assets are not transferred to Prasar Bharati (i.e., All India Radio and Doordarshan) through issue of a Notification, as enunciated under the provisions of clause (a) of section 16 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990), the land continues to be the asset of the Government of India.
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> 3. HOWEVER, it is further clarified that if some land has been acquired by Prasar Bharati, either

> through purchase or gift, after 1st April, 2000, i.e., date of delinking of the accounts from the Government accountal system, the applicable taxes would have to be paid by it.
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> 4. This Certificate is being issued to enable Prasar Bharati (Broadcasting Corporation of India) to take up the levy of property tax with the States/U.Ts. On its assets and to grant the necessary waiver under the relevant State enactments, as are applicable in this regard."

Therefore, according to the petitioner, in view of the judgment of the Supreme Court, reported in 2004 (3) SCC 92 and judgment of this Court in S.B. Civil Writ Petition No.733/2004, I.C.A.R. & Another Vs. State of Rajasthan, it is crystal clear that if the property belongs to the Union of India and it has not been transferred, then, in view of Article 285 of the Constitution of India no tax can be levied. Therefore, it is prayed that the impugned assessment order may be set aside.

On the other hand, respondent No.5 Union of India, in reply to para 3 and 4 of the writ petition, admits that the properties shown in para 3 of the writ petition belong to the answering respondent and as such it is not disputed by the Union of India, respondent No.5 that the properties in respect of which the assessment order has been passed admittedly belong to the Union of India.

However, respondents No.1 and 3 filed reply and submitted that Prasar Bharati is not part of Union of India and it

is an autonomous body having its own rights and obligations. According to respondents No.1 and 3 the petitioner Corporation is utilizing the properties and so far as present status of the properties is concerned it cannot be treated to the properties of the Union of India. In the reply, though provisions of Article 285 of the Constitution of India are not disputed the contention is raised that the assessing authority has rightly passed the order and, therefore, there is no error in the demand raised against the petitioner towards liability of tax.

I have considered the rival submissions and perused the entire record.

The petitioner has urged in the facts and circumstances of the case that the properties in respect of which land and building tax is sought to be levied and recovered are exempt from any State tax liability under Article 285 of the Constitution of India. Article 285 of the Constitution reads as under :

> "**285.Exemption of property of the Union from State taxation**-(1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.
> (2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any thority within a State from levying any tax on the property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

It is true that initially the All India Radio was under the control of Information & Broadcasting Ministry of the Government of India and it is obvious that under the Act of 1990, enacted by the Parliament, Prasar Bharati (Broadcasting Corporation of India) was created. The said Act came into force with effect from 15.09.1990. However, according to the documents placed on record, the land and building where the Akashwani is running is still in the name of Union of India and as per reply of the Union of India it is clear that the properties mentioned in para 3 viz., (1) Office Complex & Studio, Chetak Circle, Udaipur; (2) Transmitter; and (3) Staff Quarters of Akashwani, Udaipur are still the properties of Union of India. This fact is established by the documents placed on record and the reply of the Union of India, respondent No.5. Therefore, in view of the provisions of Article 285 of the Constitution of India, these properties standing in the name of Union of India are exempted from any State tax liability under Article 285 of the Constitution. In these facts and circumstances, the levy of tax by the assessment order under challenge is contrary to law and action of respondents No.1, 2 and 3 is unconstitutional.

It is also necessary to observe that in view of the judgment of the Supreme Court, reported in (2004) 3 SCC, rendered in the case of Municipal Corporation, Amritsar Vs. Senior

Superintendent of Post Office, Amritsar Division, and judgment of this Court dated 06.01.2005 passed in S.B. Civil Writ Petitions No.733/2004 and No.7053/2003, the orders passed by the respondents No.1, 2 and 3 cannot be sustained in law and the same deserve to be quashed.

As a result, this writ petition is allowed. Assessment order Annex.-4 dated 20.02.2002, amended assessment order Anex.-7 dated 31.03.2004 as well as recovery proceedings initiated against the petitioner under the Land Revenue Act and attachment order dated 02.02.2006 are quashed and set aside. The respondents are directed to refund the amount already deposited by the petitioner Corporation to it within a period of one month from the date of receipt of a copy of this order.

No order as to costs.

(Gopal Krishan Vyas) J.